

WEBINAR WEDNESDAYS



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VISUAL TRIAL

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PRESENTATION ON

“THE VISUAL TRIAL 2020”

***Lecture by: Steven I. Kroll
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DISCUSSION NOTES AND DETAILED OUTLINE

Your supervisors will be surprised when you inform them, that you wish to use exhibits in opening statement. While this will be a novel idea to most, it really isn't. The visual trial in the 21st century will challenge people. What went in the past will no longer be good to win tough cases with high profile defendants. We must convince not just our supervisors but judges and jurors that we can use these visual aids in our trials. By showing the jurors the "real world", we bring the crime scene to the jurors and make their decision much easier. Well-designed, thorough and accurate visual aids can make the difference in the outcome of the case.

OUTLINE OF PRESENTATION

I. WHY USE VISUALS?

A. Studies show:

1. When you hear information, you retain "20% "
2. When you hear and see it, you retain "50% "
3. "85%" what you learn comes through our eyes
4. "11%" of what we learn comes through our ears

II. WHAT TYPE OF VISUALS SHOULD I USE?

- A. Know your trier of fact
 - 1. Age
 - 2. Men to women
 - 3. Cultural background
 - 4. Educational background
 - 5. Financial background
 - 6. Political background
 - 7. P.E.E.

III. JURORS AND VISUALS

- A. Exhibits must be accurate; inaccuracies will render the conclusion that you are incompetent or worse
- B. Jurors will experiment; fire weapons, try on clothing, make writing comparisons
- C. Be aware of "hidden" exhibits
- D. Make sure your exhibit helps and not hurts you
 - 1. Beware of the "gratuitous" exhibit

IV. COURTROOMS AND VISUALS

- A. Your courtroom must be able to accommodate your visual
 - 1. Size
 - 2. Color/paint
 - 3. Lighting
 - 4. Outlets
 - 5. Sound
 - 6. Distance to jurors
 - 7. Removal
 - 8. Packaging Exhibits

- B. If you package your exhibit carefully, it will lead to better presentation
 - 1. An evidence box will create suspense for the jury
 - 2. Be careful that the evidence box is free from "403 objections"
- C. Packaging your Exhibits is important especially if you use the "Cardfoolery" method.
 - 1. Properly place your exhibits with the best exhibits in front, the worst exhibits in the middle and the best exhibits at the end
- D. Keep an evidence checklist pursuant to NDAA standards
- E. Pre-mark exhibits if possible and review your evidence list at all time with the clerk.
- F. Proper packaging equals preparation and professionalism

V. THE ADVANTAGE TO VISUALS

- A. Makes a bad case good
- B. Makes a bad witness good
- C. Makes a not guilty into a guilty
- D. Interest for jurors
- C. Creates jurors focus
- D. Emphasizes the point

VI. YOU ARE A VISUAL

- A. Watch how you stand
- B. Watch where your hands are
- C. Watch how you dress
- D. Watch "humor"

VII. PROBLEMS WITH JURORS AND VISUALS

A. Too many visuals

1. One per point

B. Talk to jurors not to visuals

1. Should you read from visuals?
 - a) to make a point
 - b) underline important points
 - c) is your writing style the same as speaking
 - d) proper eye contact
 - e) boring
2. Location, location, location
3. Equipment problems
4. Color/color blindness
5. Overheads
6. Frames

VIII. TRIAL

A. Use of Exhibits

1. Witness preparation
 - a) practice, practice, practice
 - b) make sure you have a good sponsoring witness
 - c) make sure the exhibit corresponds to the sponsoring witness
 - d) make sure the witness knows the proper foundation

questions

- e) go over cross examination or any other defenses which may be relevant
- f) if the witness is getting off witness stand be sure they make no gestures
- g) make sure witness knows how to work courtroom equipment

B. Courtroom preparation

- 1. Make sure your courtroom can accommodate your visuals
- 2. Make sure the courtroom personnel can accommodate

C. Voir Dire

- 1. Judicial
 - a) death penalty
 - b) O.J.
- 2. For lawyers, charts and diagrams may simplify matters

D. Opening Statement

- 1. Evidentiary evidence
 - a) good faith belief
 - b) all states except South Dakota
- 2. 16 A.L.R. 4th 810
- 3. Show to defense attorney
- 4. Proffer
- 5. Pre-trial evidence or hearing
- 6. Watch for privilege violations
- 7. Close exhibit
- 8. "Missouri" - show them instead of telling them

- E. Non-evidentiary charts
 - 1. Good faith belief
 - 2. No evidentiary hearing
 - 3. Proffer
 - 4. Fair and accurate representation
 - 5. Aiding the trier of fact
 - 6. Privilege violations
 - 7. Close Exhibit

IX. DIRECT EXAMINATION

- A. Maps-local road atlas
- B. Clocks
- C. Floor diagrams
- D. Charts and diagrams
 - 1. Thin or thick lines
 - 2. Use colors
 - 3. Watch lines crossing
 - 4. Rule of sequestration
 - 5. One incident-one circle
 - 6. Dotted lines
 - 7. 403 arguments
 - 8. One picture per witness per view
 - 9. One on one or individual
- 10. Professional or amateur
- 11. Aerial photographs
 - a) Zoom to ground view for full effect

E. Transparencies

1. Copy machine/green button

F. Police reports

1. Child abuse
 - a) physical
 - b) sexual
 - c) qualifying child as witness
 - d) stick figures
 - e) dolls

G. Expert testimony

1. Qualifications
2. Hair and fiber
3. D.N.A.
4. Drug analysis

H. Medical records

1. Admissions
2. Drug analysis
3. X-rays

X. IDENTIFICATIONS

- A. Line-ups/blow-ups
- B. Photo arrays
- C. Mug shots
- D. Change of condition from arrest to trial

XI. TANGIBLES

- A. Chalk boards - can be removed - may draw an objection
- B. String for use of measurement
- C. Styrofoam heads - in and exit wounds
- D. Mannequins
- E. Medical dictionary
- F. Crime scene tape
- G. Small cars
- H. Weapons
 - 1. point at jury?
 - 2. put in hand of defendant and comment
- I. Scale models
- J. Videos
 - 1. The pro and the con
 - 2. Field sobriety test
 - 3. Crime scenes
 - 4. Confessions
 - 5. Demonstrations
 - 6. Very rough
 - 7. Foundations problems
- K. Courtroom demonstrations
 - 1. Practice, practice, practice
 - 2. Do not put yourself in the middle
 - 3. Argument

- L. Computer simulations and animations
 - 1. Accident reconstruction and recreation
 - 2. Costs
 - 3. Rule 702 problems
 - 4. Daubert problems
 - 5. Word perfect 5.1 and 3-D Home Architect

XII. CROSS EXAMINATION

- A. Impeachment/criminal record
- B. Statements
- C. Physical objects
- D. Photographs
- E. Writing on the board

XIII. CLOSINGS

- A. Jury Instructions
- B. Charts and diagrams for argument
- C. Review of Evidence
- D. Memory
- E. Burdens and issues
- F. Removal
- G. Ex-Parte Hayes, 6 Okla. Crim. 334, 118 Pac. 614 (1911)

XIV. CONCLUSION

Visual images can work to your advantage, strengthening any case. As with other aspects of a case, some preparation must be made to insure that all is in order and runs smoothly. But the payoff can be winning versus losing. Images provide an interesting alternative to the standard dialogue of question and answer generally found in trials. They help to break the monotony, since real life rarely possesses the drama of Law & Order. Lastly, they give the jury more to think about than just what was heard--rather, what the jurors saw will also be discussed during deliberations. Technology today provides new avenues for exhibits; it is up to the creative lawyer to make the opportunities to use them.